IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

MFA.No. 1010 of 2000(A)

O A.Nos.52, 53 & 54 OF 1997 of FOREST TRIBUNAL, KOZHIKODE
.....

APPELLANTS:
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1. **P.J. BABY, S/O.P.C.JOSEPH,**
   PARAVARAKKAT HOUSE (PLANTER)
   KANJIKULAM ESTATE, KALLADIKODE,
   MANNARGHAT TALUK, PALGHAT DISTRICT.

2. **JAMES JOSEPH, S/o. P.C. JOSEPH,**
   PLANTER -DO-

3. **P.J. SEBASTIAN, S/o. P.C.JOSEPH,**
   PLANTER -DO- -DO-

4. **P.C.JOSEPH, S/o.CHACKO,**
   PLANTER -DO- -DO-

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.T.SETHUMADHAVAN

RESPONDENTS:
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1. **STATE OF KERALA, NOTICE FOR WHO MAY BE**
   SERVED ON THE CHIEF SECRETARY ,
   GOVERNMENT OF KERALA, TRIVANDRUM.

2. **CUSTODIAN OF VESTED FORESTS**
   ARANYA BHAVAN, FOREST COMPLEX,
   RAILWAY COLONY ROAD, OLAVAKKODE,
   PALGHAT.

R1 & R2 BY SPL. GOVERNMENT PLEADER SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 1010 of 2000

Dated this the 19th day of September, 2007.

JUDGMENT

Koshy, J:

One P.C. Joseph filed application before the Forest Tribunal, Manjeri as O.A.88 of 1977 claiming exemption of 43.41 acres of land. The Tribunal rejected the application. The matter was taken up before this Court. A Division Bench of this Court in M.F.A.183 of 1979 partly allowed the appeal taking into consideration the land board proceedings the land ceiling area was determined and held as follows:

> ".....Taking into consideration the effect of these documents together we are persuaded to hold in disagreement with the Tribunal that the appellant is entitled to exemption for 7 acres plus 10.81 acres of land as rubber estate in 43.41 acres regarding which he claimed exemption before the Tribunal."

The order of the Tribunal was set aside and the operative portion of the order reads as follows:

> " In the result, we set aside the order of the Tribunal to the
>
> extent exemption was declined to the appellant for 17.81 acres of land mentioned above, and confirm the order

declining to exemption 25.60 acres. The appeal is disposed of as above."

2. After the above order, the said P.C. Joseph made a gift of about six acres of land to the three sons as per Exts.A1 to A3 documents and they filed application before the Forest Tribunal. Considering the land ceiling and the nature of plantations, the maximum area was allowed by this Court. By executing a gift deed and filing fresh applications through sons the appellants will not be able to claim additional extent disregarding the earlier land board proceedings. The Tribunal in the order found on the relevant date the area in question covered by the applications was not planted with rubber or planted with anything and also held there was also no evidence to show that the area in question was used for plantation. This is a finding based on commission report. In any way, we are of the opinion that in view of the earlier order of this Court, if any extent was not given out it is for him to approach for implementation of the order. But, filing a petition after gifting part of the property a fresh petition will not lie. Allowable land ceiling area, nature of agricultural operation etc. has to be considered with respect to relevant date when the Act came to force. By making subsequent gift, land ceiling area cannot be extended. Apart from the unimpeachable findings of

the Tribunal based on evidence, we are also of the view that second applications filed are covered by principles of constructive res judicata. We see so ground to interfere with the order of the Tribunal.

Appeal is dismissed.

J.B.KO SHY,
JUDGE.

K. HEMA,
JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 1010 of 2000

Dated this the 19th day of September, 2007.

JUDGMENT